

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LONE STAR FUND IV (U.S.), L.P., LONE §
STAR FUND IV (BERMUDA), L.P. and §
LSF-KEB HOLDINGS SCA, §

Plaintiff, §

v. §

STEVEN H. LEE §

Defendant. §
§
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§
§

CIVIL ACTION NO.
3:09-CV-01614-B

**DEFENDANT'S RESPONSE TO PLAINTIFFS' OBJECTIONS
TO DECLARATION OF STEVEN H. LEE**

This Court should deny plaintiffs' request to strike paragraph 23 of Mr. Lee's Declaration in Support of Motion to Dismiss Original Complaint and the Bermuda affidavits referenced therein.

Contrary to plaintiffs' contentions, neither paragraph 23 of Mr. Lee's declaration, nor Mr. Lee's Bermuda affidavits, which are incorporated by reference and specifically reaffirmed in Mr. Lee's declaration, contain impermissible legal conclusions. Mr. Lee simply reiterates the true state of facts: Lone Star has unilaterally, without authorization from Mr. Lee or any court, and in a self-serving manner withheld distributions owed Mr. Lee as a limited partner of Lone Star Partners IV, while at the same time Lone Star has improperly applied millions of dollars of these distributions to repay Ellis Short as senior partner of Lone Star for a personal loan that he made to Mr. Lee. Lone Star's

application of those funds was directly contrary to the terms of the personal loan, as Lone Star's General Counsel Mike Thomson now admits in Lone Star's Bermuda litigation. (Ex. 1, ¶¶ 17, 18, App. 10). There is no question that Mr. Lee's partnership interests and Lone Star's withholding and misappropriation of a distribution due to Mr. Lee are in dispute in the Bermuda litigation. Indeed, plaintiffs admit this in their Reply in Support of Plaintiffs' Motion to Remand and for Fees and Costs. *See* (Mot. at 9). They also admit that Lone Star, despite having already confiscated Mr. Lee's distributions, now seeks an order from the Bermuda court retroactively authorizing that conduct. *Id.* And indeed, specific facts and matters asserted in Mr. Lee's declaration have been admitted by Lone Star's General Counsel Mike Thomson in his most recent Bermuda affidavit. Specifically, Mr. Thompson admits that:

- Lone Star is withholding Mr. Lee's partnership distributions. (Ex. 1, ¶ 13 App. 8).
- Lone Star improperly used Mr. Lee's partnership distributions to pay a personal Lone that Mr. Lee owed Lone Star senior partner Ellis Short. (Ex. 1, ¶¶ 17, 18, App. 10).

Thus, while Mr. Lee's factual statements make the unlawfulness of Lone Star's conduct self-evident, the statements are not themselves legal conclusions. Instead, they affirm concrete facts that both parties agree are true.

Paragraph 23 of Mr. Lee's declaration and the Bermuda affidavits referenced therein are also, contrary to plaintiffs' assertions, relevant. Notably, plaintiffs have not

objected to those materials as they pertain to Mr. Lee's Motion to Dismiss Plaintiffs' Original Complaint for Lack of Personal Jurisdiction, Forum Non Conveniens, and Failure to Plead Fraud With Particularity and Brief in Support. The materials are cited throughout that motion and are highly relevant to Mr. Lee's *forum non conveniens* argument as they demonstrate the duplicative, vindictive, and legally improper underpinnings of this Texas lawsuit. The materials also explain the scope of Lone Star's Bermuda litigation, which is highly relevant to the real-party-in-interest argument made by Mr. Lee in opposition to Lone Star's remand arguments. Indeed, Mr. Lee's real-party-in-interest argument is supported by the duplicative nature of Lone Star's Texas litigation, when different Lone Star entities have already brought the same claims and damages theories in the Bermuda litigation. Mr. Lee's Bermuda affidavits explain, in greater detail than the parties' Bermuda pleadings, exactly what is in dispute in the Bermuda proceedings.

Accordingly, this Court should deny plaintiffs' request and fully consider paragraph 23 of Mr. Lee's declaration and the Bermuda affidavits referenced therein in conjunction with Mr. Lee's Opposition to Plaintiffs' Motion to Remand and for Fees and Costs.

Date: November 4, 2009

Respectfully submitted,

/s/ Jerome R. Doak

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CERTIFICATE OF SERVICE

This is to certify that on this 4th day of November 2009, a true and correct copy of the foregoing Opposition to Plaintiffs' Objections to Declaration of Steven H. Lee was served electronically and by email, on the following:

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